Supreme Court, U.S.
FILED
DEC 2 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

No. 88-505

NATIONAL ASSOCIATION OF COUNTIES, *et al.*,
Petitioners,

v.

NICHOLAS F. BRADY, Secretary of the Treasury,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

David C. Vladeck
(Counsel of Record)
Alan B. Morrison

Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

Thomas H. Stanton

Olwine, Connelly, Chase,
O'Donnell & Webster
1701 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006
(202) 835-0500

Attorneys for Petitioners

December 2, 1988

CASILLAS PRESS INC., 1717 K STREET NW WASHINGTON DC 20036 — 223-1220

In The

Supreme Court of the United States

No. 88-505

NATIONAL ASSOCIATION OF COUNTIES, *et al.*,
Petitioners,

v.

NICHOLAS F. BRADY, Secretary of the Treasury,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Petitioners submit this reply brief to respond to four points made by respondent in his memorandum in opposition ("Mem. Opp.").

1. Respondent's opposition depends in large measure on an inaccurate formulation of the question presented. According to respondent, the "issue is whether Congress in fact appropriated the funds." Mem. Opp. at 5. That is not, however, the question presented by this petition. There can be no doubt that Congress appropriated $4,185,000,000 for the Trust Fund for the 1986 entitlement period, and that the local government beneficiaries in fact received all but $180 million of the amount appropriated. *See* Pub. L. 99-160, § 1, 99 Stat. 924 (1985). Thus, the question actually presented is whether Congress ever acted affirmatively to rescind the remaining $180 million that it had appropriated for 1986. Framed in this light, it is clear that the cases relied on by petitioners — especially *United States v. Larionoff*, 431 U.S. 864 (1977) and *United States v. Will*, 449 U.S. 200 (1980) — require that, in order to repeal

an existing appropriation, Congress must do so clearly, which it did not do here.

2. In attempting to identify the statutory basis for the Secretary's withdrawal of the $180 million, respondent does no more than point to what the court of appeals described as the "4.3% *reduction* mandated by Gramm-Rudman-Hollings." Mem. Opp. at 5 *citing* Pet. App. 21a. This argument, however, ignores the plain fact — never addressed by respondent — that the key provisions of Gramm-Rudman-Hollings, and the only provisions cited by the court of appeals, affirmatively *preserved* these funds. Thus, both section 255(g)(1), which protected appropriations into the Trust Fund from sequestration, and section 256(a)(2), which protected monies sequestered in the Trust Fund from cancellation, were clearly aimed at ensuring that Trust Fund monies were wholly insulated from reduction by Gramm-Rudman-Hollings. By approving the repeal of $180 million in Trust Fund monies, without any indication at all from Congress that it intended that result, the court of appeals flatly disregarded this Court's prior decisions in cases like *Larionoff* and *Will*, and therefore this Court's review is required to restore order in this vital area of law.

3. Respondent misstates petitioners' argument in suggesting that petitioners, by "not challenging Congress's initial reduction in the FY appropriation . . . have in essence conceded that no 'entitlement' to Revenue Sharing Funds attaches except as to the pro rata share of the monies actually appropriated." Mem. Opp. at 8. Petitioners have all along contended that their entitlement vested when, and only when, Congress actually appropriated monies to the Trust Fund. At that point, but not before, petitioners had an enforceable entitlement to those funds. As this Court emphasized in *Oklahoma v. Civil Service Commission*, 330 U.S. 127 (1946) — a case respondent fails to cite, let alone address — the government may deny full payment to an entitlement

beneficiary *only* if there has been an intervening change in the law that expressly authorizes nonpayment. *See also United States v. Larionoff*, 431 U.S. at 879. Here, respondent has never even attempted to meet that burden.

4. Finally, respondent argues that review is not appropriate because this case "has little if any prospective importance." Mem. Opp. at 9. But what respondent overlooks, and what lies at the heart of this case, is whether the courts may countenance the rescission of entitlement funds, or the repeal of the statute which mandates their expenditure, absent an express command from Congress. If the ruling below stands uncorrected, it will erode what had once been the fundamental characteristic of a federal entitlement — the guarantee of full payment. Thus the ruling below threatens the integrity of entitlement programs for all beneficiaries, not just local governments, and not just under the Revenue Sharing program.

Respectfully submitted,

David C. Vladeck
(Counsel of Record)
Alan B. Morrison

Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

Thomas H. Stanton

Olwine, Connelly, Chase,
O'Donnell & Weyher
1701 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006
(202) 835-0500

Attorneys for Petitioners

December 2, 1988